IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1020 OF 2020

Mathuradas Narandas & Sons Forwarders Ltd. ….Petitioner

V/s.

Central Board of Direct Taxes, Ministry of Finance, Department of Revenue & Ors. …Respondents

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Mr. Devendra Jain a/w Ms Priyanshi Desai for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
M.M. SATHAYE JJ
DATED : 13th JUNE 2023

P.C. :

1 Petitioner is impugning an order dated 13th January 2020 passed by CBDT under Section 119 (2)(b) of the Income Tax Act 1961 (the Act). The order has been passed on the facts of this case. Mr. Jain, though does not deny the facts as mentioned in the impugned order, states that these are the issues where CBDT should have taken a lenient view and condoned the delay. Mr. Jain relies on a judgment of the Apex Court in ***Commissioner of Sales Tax U. P. Vs. Auriaya Chamber of Commerce, Allahabad.***[1] In our view, first of all the judgment relied upon by Mr. Jain is of no relevance because that was relating to question of refund of sales tax paid and the delay was

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1. 1986 SCR(2) 430

about 3 and ½ years. In the case at hand, the delay is of more than 16 years after filing the returns.

2 By the impugned order, petitioner's application for condonation of delay of 3 years, 2 months and 6 days in filing the original return for AY-1998-1999 seeking to carry forward loss of Rs.3,69,05,553/- came to be rejected. Petitioner filed an application dated 26th February 2018 with CBDT under Section 119(2)(b) of the Act for condonation of delay in filing the return of income for AY- 1998-1999. Petitioner had filed its original return of income beyond the stipulated period of 5th February 2002 claiming carry forward loss of Rs.3,69,05,553/- and refund of Rs.9,71,469/-. The stipulated date of filing the return of income was 1st October 1998. Petitioner in its application has submitted various reasons for delay in filing the return of income. According to petitioner, on 4th August 1998 search and seizure operation was carried out in petitioner's premises. On 30th November 1998, the due date of filing of return of income by petitioner got over. On 29th August 2000 High Court rejected petitioner's writ petition against order of block assessment and special audit. On 27th December 2000, special audit was completed. On 28th December 2001 audit under Section 44AB of the Act was completed and on 5th February 2002 return of income was filed by petitioner belatedly.

4 Admittedly, this application for condonation of delay has been filed after 16 years from the end of the assessment year, for which claim was filed. The CBDT in its Circular 9/2015 (F.No.312/22/2015-OT) dated 9th

June 2014 issued under Section 119(2)(b) of the Act has itself directed the officers to whom authority was granted not to entertain any condonation application for claim of refund/loss beyond 6 years from the end of assessment year for which such application / claim is made.

5 We find that even if there was some hardship to petitioner and the delay upto 27th December 2000 could be attributed due to reasons beyond the control of petitioner due to books of accounts and other documents required for preparing return of income not being available, as noted earlier, the special audit and audit under Section 44AB got over on 27th December 2000 and 28th December 2001, respectively and return of income was filed on 5th February 2002 but strangely the condonation of delay application itself has been filed only on 26th February 2018 and, therefore, the CBDT has decided not to entertain the condonation of delay application. Moreover, in a similar matter, the Division Bench of this court in ***Ganesh Sahakari Bank Ltd. Vs. Government of India***[2] held that apart from delay in filing the return, petitioner also has to demonstrate why application for condonation of delay could not be filed. In that case, the delay was only of 6 years, whereas in the case at hand the delay appears to be in excess of 16 years.

6 Even a declaration of loss would require assessment so that only the genuine loss is recognised and which would be available for carry forward to be set off against future income or to claim refund. Accepting petitioner's request for such a huge delay would amount to re-opening the assessment

2. (2019) 106 taxmann.com 62 (Bombay)

of AY-1998-1999 in AY-2023-2024.

7 We see no reason to interfere, petition dismissed.

(M. M. SATHAYE, J.) **(K.R. SHRIRAM, J.)**